IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 59 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CADILA CHEMICALS PVT.LTD.

Versus

COMMISSIONER OF INOCME TAX

Appearance:

1. INCOME TAX REFERENCE No. 59 of 1987
MR.RK PATEL for Applicant.
MR BB NAYAK FOR MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 30/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the assessee as well as the revenue, the following three questions have been referred to this Court for its opinion under the provisions of section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench "A".

At the instance of the Assessee :

"1 Whether on the facts and in the circumstances of the case, the assessee was entitled to claim the cost of a diesel generating set as revenue expenditure ?

2 Whether on the facts and in the circumstances of the case the provisions of section 40A(8) were applicable in respect of interest paid to the directors and shareholders of the Company?"

2 We have heard learned Advocate Mr.R.K.Patel appearing for the applicant-assessee and learned Advocate Mr.B.B.Nayak appearing for the revenue.

3 So far as the first question is concerned, it has been decided by this Court in the case of Cadila Laboratories Pvt.Ltd. Vs. C.I.T., I.T.R. 61 of 1987, that cost of Diesel Generating Set cannot be treated as revenue expenditure. Looking to the law laid down in the said case, we answer the first question in the negative i.e. against the assessee and in favour of the revenue.

4 So far as the second question is concerned, the said question has been answered in the case of Agew Steel Manufacturers Pvt.Ltd. vs. C.I.T., 209 ITR 77. As per law laid down in the said case we answer the question in the affirmative i.e. against the assessee and in favour of the revenue.

At the instance of the Revenue :

"Whether, in law the amount of cash subsidy is not to be deducted from the cost of building and machinery for working out depreciation and investment allowance ?"

5. It has been submitted by learned Advocate that the question referred to this Court at the instance of

the revenue has been answered in the case of C.I.T. vs. P.J.Chemicals, 210 I.T.R.830. As per the law laid down in the said judgment we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference thus stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt